

CASE NO. 08cv1589

ATTACHMENT NO. 8

EXHIBIT

TAB (DESCRIPTION)

1 at all?

2 A No, I don't.

3 Q Could you have told an Officer that you
4 were, in fact, Denise's aunt?

5 It goes as to impeachment.

6 MR. MURPHY: Objection.

7 THE COURT: Objection sustained.

8 MS. PLACEK: Q Let me ask you this.

9 Isn't it true that, in fact, after
10 Denise came back into the house with you, that
11 you, in fact, had an altercation with her, a family
12 argument?

13 A No, we didn't have a family argument.

14 Q Do you remember me asking you about
15 speaking to that officer on August 7th of 19 -- or
16 August 2nd of 1988?

17 MR. CASSIDY: Objection, Judge, form of the
18 question.

19 THE COURT: Well, if the witness understands
20 it, she may answer.

21 MS. PLACEK: Q And do you remember me a few
22 seconds ago asking you whether you had a conversation
23 with an officer, a youth officer, Steven Martkovich,
24 M-a-r-k-o-v-i-c-h? Star No. 4067?

1 A The 2nd?

2 Q No, that is his star number, on the
3 2nd of August, correct?

4 A No, I didn't talk to no police officer.

5 Q Beg your pardon?

6 A No, I didn't talk to any police
7 officer on May 2nd.

8 Q Do you recall whether or not you told
9 him, at this time, that you ordered Denise into
10 the house where an altercation was engaged in both
11 over her, meaning Denise, talking with adult men?

12 A No.

13 Q No, you don't remember or no --

14 A No, I don't remember.

15 Q I am sorry. No, you never made that
16 statement?

17 A I don't remember talking to an officer
18 on the 2nd.

19 Q Then is your answer to my question as
20 to whether or not you ever told the police, specifically
21 the officer that I talked about before, that you and
22 Denise, after you ordered her into the house, you had
23 an altercation, was because she was talking with adult
24 men?

1 A What do you mean by an altercation?

2 Q Well, what I am asking you is on
3 August 7th of 1988, you knew the police were
4 investigating the missing Denise Johnson, correct?

5 A The 7th.

6 Q August the 2nd, 2, I am sorry, August 2,
7 correct?

8 A Okay. You keep saying 7th.

9 Q I am sorry, maybe I am not talking
10 clearly. On the 2nd, correct, you knew the police
11 were investigating your missing niece, correct?

12 A Yes.

13 Q You not only knew that they were
14 investigating, as a matter of fact, you are the one
15 that called them, correct?

16 A Yes.

17 Q And you spoke to the police officers as
18 a result of your calling in order to find your niece,
19 correct?

20 A Yes.

21 Q And let me ask you this last.

22 When I asked you whether you spoke
23 to this Officer Steven, and I believe it's pronounced
24 Martkovich, and I spelled out his name and gave you his

1 star number, you said you didn't remember, correct?

2 A You said the 2nd.

3 Q The 2nd, I am sorry, on the 2nd.

4 A I spoke to an officer on the 1st, the
5 night she was missing.

6 Q All right. Let me ask you this.

7 Did you ever tell the Officers that,
8 in fact, you ordered Denise off the porch when she was
9 talking to Jerome Hendricks?

10 A I told her to go upstairs.

11 Q Did you understand my question?

12 A Yes.

13 Q Then I would move to strike her answer
14 as non-responsive.

15 THE COURT: The answer stricken.

16 MS. PLACEK: Q Okay. Did you ever tell the
17 police that, in fact, you ordered Denise off the porch
18 when she was speaking to Jerome Hendricks?

19 MR. MURPHY: Objection.

20 THE COURT: What is the basis of your objection?

21 MR. MURPHY: There is no basis, this is not
22 impeachment.

23 THE COURT: It might be foundational for
24 admissibility of the statement under 115-10-1.1 as

1 substantive evidence.

2 It's only foundational at this
3 point and that is what she is relying on, whether she
4 can prove it up, whether she can close up the impeachment
5 or establish it as a basis for admissibility as
6 substantive evidence, I cannot yet tell.

7 If she doesn't make the foundation
8 with this witness, when she is on the stand, when will
9 she make it?

10 MR. MURPHY: I understand that, but she is asking
11 -- but it would appear, at best, for the defense, a
12 prior consistent statement.

13 She said she told her to get
14 off the porch.

15 THE COURT: No, no, no, this witness has
16 consistently said that she does not recall ever telling
17 the police officer anything about that. That is what
18 she is asking her about, not what she -- not the
19 conversation that the witness had with Denise, she is
20 talking about the conversation with the witness, the
21 witness had with the police officer.

22 MR. MURPHY: She said, did you ever tell the
23 police --

24 THE COURT: And the witness says she doesn't

1 know, she didn't recall having told the police anything
2 so far. She hasn't recalled, so far, as I can
3 recall her testimony, she has not acknowledged telling
4 the police a single thing.

5 MR. CASSIDY: So the record is clear, she has
6 not been asked the proper date, I believe.

7 THE COURT: That may be, Mr. Cassidy, she
8 hasn't, she has indicated she is confused about
9 the dates, but that is not the issue we are talking
10 about now, that is not the basis of your objection.

11 The basis of your objection was
12 a response to what this witness had said to
13 Denise and we are not asking her that, that is why
14 I struck the answer as not being responsive.

15 Put another question. Your
16 objection is overruled.

17 MS. PLACEK: Q Did you ever tell the police
18 that you, in fact, ordered Denise off the porch when
19 she was speaking to Jerome Hendricks?

20 A When Denise was speaking to Jerome
21 Hendricks, I told her to go upstairs.

22 MS. PLACEK: Motion to strike as non-responsive.

23 THE COURT: Would you listen to the question
24 and see if you can answer the question that is being

1 put to you.

2 If you do not understand the
3 question, if you will say so, I will have her put
4 another question to you.

5 Do you understand?

6 THE WITNESS: Yes.

7 THE COURT: Put another question.

8 MR. PLACEK: Thank you, your Honor.

9 Did you ever tell the police
10 that you ordered Denise off the porch when she
11 was speaking to Jerome Hendricks?

12 THE WITNESS: I don't understand what you mean
13 by "order her."

14 MS. PLACEK: Q Did you ever tell the police
15 that you ordered Denise off the porch, ordered,
16 commanding her off the porch when she was speaking to
17 Jerome Hendricks?

18 THE COURT: Did you tell the police that?

19 THE WITNESS: I don't understand what she is
20 saying.

21 THE COURT: She is asking you, did you ever
22 tell a police officer that you told Denise to get off
23 the porch?

24 THE WITNESS: No.

1 THE COURT: You never told that to a police
2 officer?

3 THE WITNESS: No.

4 THE COURT: Put another question.

5 MS. PLACEK: Thank you.

6 Did you ever tell the police that
7 because of your ordering Denise off the porch to
8 stop talking to Jerome Hendricks, that you and Denise
9 got in a fight?

10 THE WITNESS: No.

11 MS. PLACEK: Q Thank you.

12 Did you ever tell the police that
13 as part of the fight that you fought with Denise over
14 her seeing adult men --

15 A Could you repeat that?

16 Q Surely.

17 Did you ever tell the police
18 that as part of the fight, you spoke to Denise about
19 her seeing adult men?

20 MR. MURPHY: Objection.

21 THE COURT: Basis?

22 MR. MURPHY: Relevance.

23 THE COURT: Overruled, on the relevancy
24 grounds.

1 THE WITNESS: I just told her she couldn't see
2 the mens.

3 MS. PLACEK: I move to strike.

4 THE COURT: Strike.

5 MS. PLACEK: Q Did you ever tell the police,
6 as part of the fight in the house, that you argued about
7 Denise seeing adult men?

8 A I don't understand.

9 Q I am sorry?

10 A I don't understand you.

11 Q Did you ever tell the police that you
12 had a fight with Denise in the house and as part of
13 the fight, you fought with her about her seeing adult
14 men?

15 A No.

16 Q Thank you.

17 Now, isn't it correct that
18 Denise then returned after she was in the house
19 with you, back to the porch?

20 A Yes.

21 Q And you went to look for her about 20
22 minutes later, is that correct?

23 A No.

24 Q About how long later -- I apologize, about

1 how long before you went back to find Denise -- I
2 am sorry, did you ever -- Let me rephrase.

3 Did you ever go looking for
4 Denise after you were in the house with her?

5 A After I was in the house with her?

6 Q Yes?

7 A She was in the house with me.

8 Q Well, she left the house, didn't she?
9 I withdraw and rephrase.

10 You stated for the Assistant State's
11 Attorney that you and Denise went in the house,
12 correct?

13 A Yes.

14 Q How long did you and Denise stay in the
15 house?

16 A Denise stayed in the house five minutes.

17 Q Beg your pardon?

18 A Five minutes.

19 Q How long did you stay in the house?

20 A Five minutes.

21 Q Well, isn't it correct that Denise
22 left the house before you did?

23 A Yes.

24 Q Isn't it correct that Denise told you

that she was going back to the porch?

A Yes, she asked.

Q How long -- Withdraw.

Did you return to the porch with
her?

A No.

Q How long after Denise returned to
the porch did you return to the porch, if ever?

A Could you repeat that for me?

Q Surely.

After Denise left, how long until
you returned to the porch, if ever?

A Five minutes.

Q. So, would it be correct in saying that you, in fact, stayed in the house ten minutes?

A Five minutes, I stayed in the house
five minutes.

9 Well, would that -- Excuse me?

A. Five minutes.

8 And that would be in total, correct?

A Yes -

Q Okay. Thank you.

Now let me ask you this.

You stated that Denise was living

with your mother, correct?

1 A Yes.

2 Q Do you know whether Denise's natural
3 mother was, in fact, alive?

4 MR. MURPHY: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 MS. PLACEK: Q As a matter of fact, isn't it
8 correct that you know of your own personal knowledge
9 that your mother, or strike that, I am sorry, your
10 mother, Mrs. Fields, was appointed Denise's guardian,
11 correct?

12 A Yes.

13 Q Thank you.

14 Do you know who Hardy Johnson is?

15 A Yes.

16 Q Would you tell his Honor, Judge Holt,
17 who Hardy Johnson is?

18 A Her grandfather.

19 THE COURT: I am sorry?

20 THE WITNESS: Denise's grandfather.

21 MS. PLACEK: Q Do you know where Hardy Johnson
22 lives?

23 A No, I don't.

1 Q Do you know who William McGoy is?

2 A Yes, I do.

3 Q Would you tell his Honor, Judge Holt,
4 who William McGoy is?

5 A He is my grandfather.

6 Q Isn't it correct William McGoy is,
7 in fact, Denise's father?

8 A No.

9 Q All right. Thank you.

10 Now, your niece was a small
11 girl, wasn't she?

12 A Yes.

13 Q She wasn't quite five feet, was she?

14 A She was about five.

15 Q Did she weigh yet 100 pounds?

16 A Yes.

17 Q But she was small boned, not a fat person
18 like myself, correct?

19 A She was small.

20 Q Okay. Thank you.

21 Do you know a gentleman by the
22 name of Gregory Waters?

23 A No, I don't.

24 Q Do you know a gentleman by the name of

Gregory Wilson?

A No.

Q Did you ever tell the police -- Withdraw.

Isn't it correct that, in fact,

that Denise had been staying at your house several days before the date of August 1st?

A Repeat that for me, please?

Q Isn't it correct that Denise had been staying at your house several days before August 1st?

A No.

Q Did you ever tell the police that
Denise had been living at your house for several days
before August 1st?

A No.

Q Thank you, Ma'am.

Isn't it correct that Denise
said that she wanted to see Jerome Hendricks?

A **No.**

MR. CASSIDY: Objection, Judge, foundation.

THE COURT: The objection is sustained.

MS. PLACEK: withdraw.

Isn't it correct, when you were fighting with Denise in the house, she stated to you that she, in fact, wanted to see Jerome

1 Hendricks?

2 THE WITNESS: No.

3 MS. PLACEK: Q Isn't it correct that, in fact --
4 Withdraw.

5 How long did you know your
6 niece?

7 A Since she was a baby.

8 Q How long had she been living with your
9 mother?

10 A A year and a half.

11 Q How long had she been babysitting for
12 you?

13 A Denise?

14 Q Yes?

15 A Off and on.

16 Q Would it be correct in saying that you
17 knew that Denise ran away?

18 MR. MURPHY: Objection.

19 MS. PLACEK: Of her own personal knowledge?

20 THE COURT: What is the basis?

21 MR. CASSIDY: Calls for a conclusion and
22 relevance.

23 THE COURT: Relevance.

24 MR. CASSIDY: Form of the question, calls for

1 a conclusion and relevance.

2 THE COURT: The objection is overruled as to
3 all three grounds.

4 It neither calls for a conclusion
5 that she is incapable of drawing, it's not irrelevant,
6 but it might be, I can't tell.

7 MR. CASSIDY: Offer of proof, then, Judge.

8 THE COURT: What offer of proof?

9 If there were a jury out here,
10 maybe an offer of proof would make some sense, but after
11 she tells me what she is going to tell me, what
12 difference does it make?

13 I can hear it now and decide
14 whether or not it's relevant, just as well as I can
15 hear it off the record and decide whether it's
16 relevant and then put it on the record.

17 Let's make sense.

18 Objection is overruled.

19 MR. MURPHY: Judge, if I may pursue that,
20 Judge. What relevance does it have if she, even
21 assuming it were true, if it were --

22 THE COURT: Mr. Murphy, if it doesn't have
23 any relevance, it won't have any credence, it won't
24 have any weight, but because you say it's not relevant,

1 I cannot tell whether it's going to be relevant and
2 it may become terribly relevant.

3 Objection is overruled.

4 MR. CASSIDY: Thank you, Judge.

5 MS. PLACEK: Q Isn't it correct that you knew
6 Denise was a runaway?

7 A She never ran away.

8 Q When you say she never ran away, is it
9 your testimony that to the best of your knowledge you
10 knew Denise never ran away from your mother?

11 A Never.

12 Q You knew that Denise -- Well, let me ask
13 this.

14 Isn't it true that Denise often
15 stayed at the, when she ran away, stayed at her
16 step-grandfather's apartment?

17 MR. MURPHY: Objection.

18 THE COURT: Overruled.

19 MR. MURPHY: Objection, form of the question.

20 THE COURT: Mr. Murphy, as I understand what
21 you told me in the opening statement, albeit it's your
22 opening statement and is not evidence, you are going to
23 have me infer from this evidence that this, because as
24 I understand your opening statement, that there will

1 be no direct evidence that places this Defendant in
2 the company of the victim at the time of the death,
3 and you are going to, therefore, ask me to infer that
4 she was with the Defendant.

5 The Defendant has a right to ask
6 me to infer that she may have been with any number of
7 other people on the same foundational basis that you
8 are going to ask for me to infer the contrary, and
9 that is all it's being offered here for is to show a
10 pattern of conduct by this victim, and that would
11 allow another inference that you champion for and it's
12 relevant, it's as relevant as the testimony that you
13 are going to offer and ask me to conclude that, therefore,
14 the victim was within, was with the Defendant.

15 Objection overruled.

16 MR. MURPHY: That was not the basis of my
17 objection, though.

18 The basis of my objection was assuming
19 a fact not in evidence.

20 The witness said she was, did not
21 show -- she ran away, the next question was when she
22 ran away, did she go to her grandfather's. It's
23 improper.

24 THE COURT: Mr. Murphy, the objection is overruled.

1 MS. PLACEK: May I proceed, your Honor?

2 THE COURT: You may.

3 MR. PLACEK: Thank you.

4 Isn't it correct that when
5 Denise ran away, she went to her step-grandfather's
6 apartment and stayed there?

7 A She never ran away.

8 Q Thank you.

9 To the best of your knowledge, did
10 you ever make that statement to the police?

11 A Yes.

12 Q That, in fact, she went, she ran away,
13 could be found at the apartment of her step-grandfather?

14 A No, I didn't.

15 Q Okay. Thank you.

16 Now, calling your attention to what
17 has been marked as People's No. 7 -- Can I?
18 It's the picture.

19 THE COURT: I see it.

20 MR. PLACEK: Q How old was Denise when that
21 picture was taken?

22 A She was 12.

23 Q Thank you.

24 THE COURT: How old?

1 THE WITNESS: 12.

2 MS. PLACEK: Q Now, calling your attention to
3 the diagram presented, when was the first time that you
4 saw this diagram?

5 A When I came here.

6 Q When you say when you came here, does that
7 mean, does that "here," mean in this courtroom?

8 A No, the State's Attorneys'.

9 Q Pardon?

10 A The State's Attorneys'

11 Q Over at the State's Attorney's Office,
12 is that correct?

13 A Yes.

14 Q How many times had you been at the
15 State's Attorney's Office?

16 A Twice.

17 Q Were you there during, in fact -- Excuse
18 me, withdraw.

19 When were these two times?

20 A Today and last week.

21 Q Were you ever there in the year of 1990
22 with two different State's Attorneys?

23 A No.

24 Q Thank you.

1 Q Now, you described certain clothing
2 that your niece had on, correct?

3 A Yes.

4 Q And when we speak of clothing that your
5 niece wore, I believe you described certain shoes,
6 correct?

7 A Yes.

8 Q How long had she had those shoes?

9 A Not too long.

10 Q How long is "not too long," to you?

11 A Three months.

12 Q And let me ask you this.

13 I believe you described a color,
14 correct?

15 A Yes.

16 Q What color were they?

17 A White.

18 Q Thank you.

19 May I have one moment, Judge?

20 To the best of your knowledge, on
21 August 7th of 1988, do you know whether or not a
22 report of Denise being seen alive at approximately,
23 well, let me just start there.

24 Do you know whether or not on

1 approximately, between the time of August 1st and
2 August 7th of 1988 there was reported to you by the
3 Chicago Police Department or Youth Officers investigating
4 Denise's missing, that she was, in fact, seen alive?

5 MR. MURPHY: Objection.

6 THE COURT: Objection is sustained.

7 MS. PLACEK: Your Honor, that is all I have.

8 Thank you, M'am.

9 THE COURT: Redirect?

10 MR. CASSIDY: May I approach the bench, Judge?

11 REDIRECT EXAMINATION

12 BY

13 MR. CASSIDY:

14 Q I will show you what will be marked as
15 People's Exhibit No. 12 for identification.

16 Do you recognize what these are?

17 A Yes.

18 Q What do you recognize them to be?

19 A Denise's shoes.

20 Q Are those the shoes that you last
21 seen her wearing on August 1st of 1988?

22 MR. LUFRANO: Objection as to whether they are
23 the same or similar.

24 THE COURT: What is the basis of that objection?

1 MS. PLACEK: Withdrawn, Judge.
2

3 MR. CASSIDY: Q These are shoes?
4

5 A Yes.
6

7 Q She was wearing on August 1st of 1988?
8

9 A Yes.
10

11 MR. CASSIDY: No further questions, Judge.
12

13 RECROSS EXAMINATION
14

15 BY
16

17 MS. PLACEK:
18

19 Q And those are the same shoes that
20 you described with the State's Attorney, and we can
21 mark these, Counsel, what marking?
22

23 MR. CASSIDY: 12.
24

25 MS. PLACEK: Q Those are the same shoes that
26 you described when this Assistant State's Attorney
27 asked you questions, correct?
28

29 A Yes.
30

31 Q And you described, as a matter of fact,
32 the name, "Denise," being in green, correct?
33

34 MR. CASSIDY: Objection, Judge. She didn't
35 say green.
36

37 THE COURT: The objection is sustained.
38

39 MS. PLACEK: Q Well, let me ask you this.
40

41 Did you, in fact, when this gentleman
42

was asking you questions, describe the name of Denise
being in green on those shoes?

A Can you repeat that?

Q When this gentleman was asking you questions about 15 minutes ago and asked you to describe the shoes, did you, in fact, describe those shoes as having Denise's name written in green?

A No.

MS. PLACEK: Thank you.

That is all, Judge.

THE COURT: Anything further, Mr. Cassidy?

MR. CASSIDY: No.

THE COURT: Thank you, Ms. Hill, you may step down.

(Witness excused.)

THE COURT: Mr. Cassidy, I would -- Are we likely to get another witness on or off before 5:00 o'clock?

MR. CASSIDY: It's John's witness.

MR. MURPHY: I think, you know, it really depends on cross.

I would say that the direct of this next witness would be no more than five to seven minutes.

THE COURT: Well, let's try. He will have to come.

1 back if we don't finish.
2

3 MR. MURPHY: People would call Larry Nitsche.
4

5 Judge, if I may, some of the
6 witnesses are being called out of order, I would
7 like to call them in for their convenience.
8

9 MS. PLACEK: We previously spoke of that.
10 Since this is a benc trial, certainly, your Honor.
11

12 (Witness sworn.)
13

14 THE COURT: You may be seated.
15

16 Good afternoon, how are you?
17

18 THE WITNESS: Good.
19

20 THE COURT: You may proceed, Mr. Murphy.
21

22 MR. MURPHY: Thank you, Judge.
23

DET. LAWRENCE NITCHE,
called as a witness herein, after having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MR. MURPHY's

Q Would you state your name and spell
your last name for the Court Reporter?

A My name is Lawrence Nitche, N-i-t-c-h-e.

Q Mr. Nitche, by whom are you employed?

A City of Chicago.

Q : And in what capacity are you employed now?

A I am now with the truck investigations
for the Corporation Counsel.

Q Were you employed with the Chicago Police
Department at one time?

A Yes

8 In what capacity were you employed there?

A As a Detective With Area 2 Violent Crimes

Q How long did you work for the Chicago
Police Department?

1 Q And in your capacity now, you are also
2 employed by the Chicago Police Department?

3 A I am officially on a leave of absence with
4 the Chicago Police Department.

5 Q And, Mr. Nitche, you said you were a
6 Detective in Area 2?

7 A Yes.

8 Q I would like to direct your attention to
9 the date of August 8th of 1988, were you working on
10 that particular day?

11 A Yes.

12 Q On that particular day, did you have an
13 occasion to come into contact with any individuals
14 that you see in Court today?

15 A Yes, sir.

16 Q Would you please point to that person
17 and indicate an article of clothing?

18 A He is --

19 MS. PLACEK: Stipulate he would be pointing
20 to Jerome Hendricks.

21 MR. MURPHY: So stipulated, your Honor.

22 THE COURT: Let the record so reflect.

23 MR. MURPHY: Q And, Detective Nitche, was the
24 Defendant, on August 8th of 1988, brought to Area 2

Violent Crimes?

A Yes, sir.

Q And where is that located?

A 727 East 111th Street.

Q And is that -- Did you speak to him
there?

A Yes; I did.

Q And where did you speak to him at?

A I spoke to him in one of the interview rooms located on the second floor in the violent Crimes Office of Area 2.

Q Approximately what time did that conversation begin?

A Approximately ten minutes to nine that night

Q And do you recall who else was present that night, besides yourself and the Defendant?

A Just myself and the Defendant

Q And could you describe how that interview began?

A Yes, I read him his Miranda rights.

Q And how did you give him his Miranda
Rights?

A I read them from a pre-printed form

1 THE COURT: Excuse me, Mr. Murphy, this witness
2 testified on the suppression hearing, didn't
3 he?

4 MS. PLACEK: Yes, he did, Judge.

5 THE COURT: Are we going to go back through his
6 whole testimony again? I heard it once.

7 If you are seeking to lay a
8 foundation for the admissibility of the written
9 document, can't we just assume that his
10 testimony or stipulate his testimony given at the
11 suppression hearing would be the testimony that I
12 would hear now, or is there something new that you
13 are going into?

14 MS. PLACEK: I suggest, also, that if the State
15 is going about it this way, this gentleman isn't
16 going to be off by 5:00, even with the State's testimony
17 on direct.

18 THE COURT: You know, you can do it, Mr. Murphy,
19 I don't know what the purpose is, I heard his testimony
20 once and I remember it and I have notes on it, I don't
21 know why I need to hear it all over again.

22 MR. MURPHY: I believe the substance of the
23 statement will be gone into by the Detective and also
24 at this point, it's my understanding that unless both

1 parties stipulate to evidence, we are starting from
2 point zero in this trial.

3 THE COURT: I know.

4 MR. MURPHY: I can't assume that evidence came
5 out during the trial hearing is true.

6 THE COURT: I thought, maybe --

7 MS. PLACEK: There is a transcript in
8 existence.

9 THE COURT: Is there any possibility that we
10 don't have to go through this, because we might as
11 well take him off the stand now and bring him back
12 Monday, because we are are not going to get through
13 by 5:00 o'clock.

14 MS. PLACEK: I know the State has a copy of the
15 transcript.

16 MR. MURPHY: Well, Judge, what I intend to go
17 into is an oral statement.

18 THE COURT: I understand what you are going
19 into, Mr. Murphy, and I anticipate precisely that the
20 Defense will do as much of a cross examination around
21 that as they did on the motion to suppress and that
22 is going to keep us here well beyond 5:00 o'clock and
23 I just wondered out loud whether that could be
24 avoided, since I have heard this testimony before.

1 MS. PLACEK: And there is a transcript.

2 THE COURT: On the other hand, if it can't, then
3 I would suggest that we recess Mr. Nitché from the
4 stand and ask him if he could kindly return on Monday.

5 MR. MURPHY: If there is a way to shorten it,
6 we are open to it.

7 MS. PLACEK: I will stipulate to the transcript,
8 to the point of the transcript, Judge.

9 THE COURT: And then I have his testimony,
10 direct and cross.

11 MR. MURPHY: What you don't have is the substance
12 of the statement and the fact that the Miranda
13 Rights were given.

14 MS. PLACEK: Miranda Rights were spoke of,
15 Judge. I will do whatever the Court --

16 MR. MURPHY: At the point they were asked about
17 it, there was an objection, whether the Court will
18 assume they are correctly given.

19 There was an objection sustained.

20 THE COURT: Is there going to be an issue
21 about the Defendant given Miranda Warnings?

22 MS. PLACEK: The Court ruled on my motion.

23 MR. MURPHY: I don't know what that means
24 because at this point, there is no evidence that

1 Miranda Rights were given.

2 THE COURT: Proceed, Mr. Murphy.

3 MS. PLACEK: I suggest this is going to take a
4 very long time, then.

5 THE COURT: 5:00 o'clock we will release Mr.
6 Nitcha from the stand.

7 MS. PLACEK: I have a real problem with
8 piecemeal, I will do whatever the Court wants, Judge.

9 MR. MURPHY: Whatever you want to do.

10 THE COURT: Proceed.

11 MR. MURPHY: Q Detective Nitcha, you testified
12 you gave the Defendant his Miranda Rights?

13 A Yes.

14 Q How did you give his Miranda Rights?

15 A I read them from a pre-printed card,
16 an FOP calendar book.

17 MR. MURPHY: Do you want to stipulate they were
18 given?

19 MS. PLACEK: There would be such a stipulation
20 that those rights were given.

21 MR. MURPHY: So stipulated, your Honor.

22 Now, Detective Nitcha, after you
23 gave the Defendant his Miranda Rights, could you tell
24 Judge Holt what, if anything, was said between you

1 and the Defendant?

2 THE WITNESS: Yes. The Defendant indicated to
3 me that he wanted to do everything possible to clear
4 his name and he would cooperate completely with the
5 investigation.

6 Q Did you have an occasion to ask him about
7 any particular dates?

8 A Yes, I did. I asked him about the
9 1st of August, 1988, could he give me his whereabouts
10 for that night.

11 Q What did he tell you?

12 A He stated that around from 6:00 o'clock
13 to approximately quarter to 9:00 he was across the
14 street at a guy's, a friend of his named Tom, I
15 believe it was, 244 West 117th Street.

16 Q That would have been across the street
17 from his house?

18 A From his house.

19 Q What else did he tell you that night?

20 A After he left Tom's house, he came home
21 for ten minutes and had something to eat. He left
22 his house sometime before 9:00 o'clock and walked
23 to West Pullman Park. He said along the way he ran
24 into James Walker and I think --

1 Q Is that James Walker or Michael Walker?

2 A Michael Walker.

3 MS. PLACEK: Objection, Judge.

4 THE COURT: Objection is sustained. Leading.

5 MR. MURPHY: Q What is the name of the
6 individual?

7 A He said it was Michael Walker and it
8 was Tina, I can't think of her last name, it slips
9 my mind right now, but he did see these people along
10 the way as he walked to West Pullman Park.

11 Q Approximately what time was this about?

12 A Approximately 9:00 o'clock. He said
13 he stayed at West Pullman Park for some time around
14 9:30 when he left and went to a school playground, I
15 think it was White.

16 Q Is that at White's School?

17 A At White's School Playground.

18 MS. PLACEK: Judge.

19 THE COURT: Objection sustained. Do not lead.

20 MR. MURPHY: Q And what else did he tell you
21 that night?

22 A He met a couple more of his friends
23 there and a guy named Shorty Mack and one other fellow,
24 the name slips my mind, but they played basketball and

1 drank a few beers until about 4:30 in the morning,
2 at which time they returned home.

3 Q And at this time, anytime -- Detective
4 Nitche, strike that.

5 How long did this conversation
6 with the Defendant last?

7 A Approximately 20 minutes or so.

8 Q And at any time, did the Defendant ever
9 tell you that he observed the victim, Denise Johnson?

10 MS. PLACEK: Objection, leading and suggestive.
11 Also foundational as to prior conversation.

12 THE COURT: Objection is sustained.

13 MR. MURPHY: Q Detective Nitche, during any
14 time during this 20 minute conversation, did he ever
15 tell you that after 6:00 o'clock in the evening until
16 approximately 4:30 in the morning on August 1st and
17 August 2nd of 1988 that he was with or saw Denise
18 Johnson?

19 A No, he did not.

20 MS. PLACEK: Continuing objection as to the
21 foundation. Not only the foundation, Judge, but it's
22 improper as to leading and suggestive nature.

23 THE COURT: The objection is sustained. The
24 answer will stand.

1 MR. MURPHY: May I ask what the basis is?

2 THE COURT: If you are going after an admission,
3 an admission by omission, you have to personally lay
4 a foundation that would have given the Defendant a
5 reasonable opportunity to make the statement you are
6 saying he didn't make.

7 You just can't ask him didn't he
8 tell you something. He may not have been asked
9 or not asked any question at all that would have
10 elicited the response that you say he should have
11 made.

12 Your objection is sustained.

13 MR. MURPHY: Detective Nitchie, at any time when
14 the Defendant was in your presence, did he have occasion
15 to make any phone calls?

16 THE WITNESS: Yes, he did.

17 MR. MURPHY: Q Who did he call?

18 A He told me he was calling T.V. Reporter
19 Russ Ewing and he also made a phone call to his mother.

20 Q Approximately what time did he make those
21 phone calls?

22 A I believe one was 9:15 and the other one
23 was around 9:20.

24 Q Was that the extent of the contact you

1 had with the Defendant after 9:00 o'clock that
2 evening?

3 A Yes, sir, I did.

4 Q After 9:15 or 9:20?

5 A He was turned over to a couple other
6 detectives and he was taken someplace else for a test.

7 MS. PLACEK: Objection. Motion to strike the
8 last part.

9 THE COURT: Overruled.

10 MR. MURPHY: No further questions, Judge.

11 MS. PLACEK: Motion to strike the entire
12 testimony of the Officer as irrelevant to the matter
13 at hand, August the 1st is the day, Judge.

14 If the Court will read the
15 Indictment, I believe it doesn't deal with the afore-
16 mentioned charge, no alibi, Judge, has, in fact, been
17 filed by the Defense in this matter.

18 Therefore, it becomes irrelevant.

19 THE COURT: Overruled.

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CROSS EXAMINATION

80

MS. PLACEK:

Q Let me ask you this, Officer, when you were questioning the Defendant on all the events that you testified to, those dealt with, in fact, his actions on August 1st of 1988, correct?

A That is correct, Ma'am.

Q And let me ask you this, also.

What date were you questioning
the Defendant?

A The 8th of August, Ma'am.

MS. PLACEK: Thank you, Judge.

If the State wishes, we can stipulate that this Officer did testify, there is no issue of force, we would ask that the State accept our stipulation as to the adoption of this Officer's previous testimony.

THE COURT: State?

MR. MURPHY: Judge, we would decline.

THE COURT: The stipulation is declined.

MS. PLACEK: Then I have no further questions
of this Officer, Judge.

THE COURT: Thank you, Ms. Placek.

Do you have any redirect?

MR. MURPHY: No, Judge.

THE COURT: Thank you, Mr. Nitche, you may step down.

(Witness excused.)

THE COURT: The matter of Jerome Hendricks is continued order of Court February 8th at 1:00 p.m.

Only for the one matter we
discussed.

MS. PLACEK: With all due respect, Judge, the Court intends to go on this case?

THE COURT: I am sorry, I didn't quite hear
you.

MS. PLACEK: I am sorry, Judge. The Court
intends to go on this case as to Monday, correct, to
take evidence?

THE COURT: Yes, that is my intention.

MS. PLACEK: Is that just -- I have to inform
other judges I will not be available.

THE COURT: It's my intention to work Monday

MR. MURPHY: If I can ask, do you know what time? Do you have any idea when you want to, when you anticipate we will start on Monday?

THE COURT: I venture to say 1:00 o'clock

1 (Which were all the
2 proceedings had in this
3 matter at this time.)
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9 REPORT OF PROCEEDINGS of the hearing had
10 before the Honorable LEO E. HOLT, Judge of said
11 court, on the 8th day of February, 1991.

12 . APPEARANCES:

13 HONORABLE JACK O'MALLEY,
14 State's Attorney of Cook County, by
15 MR. JOHN MURPHY,
16 MR. SCOTT CASSIDY,
17 Assistant State's Attorneys,
18 for the People of the State of Ill.
19 MR. RANDOLPH N. STONE,
20 Public Defender of Cook County, by
21 MS. MARIJANE PLACEK,
22 MR. VINCENT LUFRANO,
23 Assistant Public Defender,
24 for the defendant.

1 THE CLERK: Sheet 12, line 12; Jerome
2 Hendricks.

3 THE COURT: Where is Mr. Murphy? Do you
4 know, Mr. Coleman?

5 MR. COLEMAN: I thought I saw him when I
6 came down.

7 THE COURT: They may be in the jury room.

8 MR. COLEMAN: Let me check there.

9 THE COURT: Does the interview with the
10 officer Obviate the necessity of a hearing?

11 MR. LUFRANO: No, it did not, your Honor.

12 THE COURT: I have before me the motion of
13 the defendant, which is entitled a Motion to
14 Dismiss. And I take it, while the motion doesn't
15 tell me with particularity, I take it that the
16 defendant complains that the conduct of the
17 police violates his Fourteenth Amendment right to
18 due process; that's as a result of the failure of
19 the State, through its agent, law enforcement
20 agents, failed to disclose matters which would
21 have been exculpatory or which bear upon the
22 guilt or innocence of the defendant, resulting in
23 a Brady violation, in contravention of his
24 Fourteenth Amendment rights.

1 I have also been tendered a copy
2 of a document wherein it is stated that a police
3 officer came in to information from an anonymous
4 informant, and I'm not using that word as a word
5 of art, but rather as a characterization, which
6 may not be entirely accurate, but in any event,
7 the police officer came in to information from
8 some anonymous source, the anonymous source
9 residing at a specific location, thereafter, the
10 identity of that source is silent or efforts to
11 identify that source are nonexistent.

12 Further, I understand the
13 defense's position to be that if the identity of
14 that source were known, that it is probable that
15 that source would have information to the effect
16 that the decedent in this case was seen alive
17 subsequent to the time that the State contends
18 she was last seen with the defendant, or at least
19 the very least, as I understand it, the defendant
20 would be able to utilize that person's
21 information to raise a reasonable doubt as to
22 whether or not the defendant was the last person
23 to see the victim alive.

24 It's around the identiy of that

1 person that this hearing concerns itself. What is
2 meant by the statement in the police report and
3 who the source of that information is the
4 totality of the inquiry that I perceive this
5 inquiry to be about. If I'm incorrect on that,
6 from either side's perspective, I'd like to know
7 about that now so that we can set the parameters
8 for this hearing.

9 MS. PLACEK: The Court is correct from the
10 defense's standpoint as to the statement of our
11 argument, Judge.

12 MR. MURPHY: Judge, I believe that's
13 accurate, as far as we know.

14 THE COURT: Miss Vrodolyak, call Mr. --

15 MR. MURPHY: Judge, if I may? You intend to
16 put him on the witness stand now, Judge?

17 THE COURT: Let me handle this other matter,
18 and then we will come right back to this.

19 (Whereupon, the case was
20 passed and other proceedings
21 had, after which the case
22 was recalled and the
23 following proceedings were
24 had:)

1 THE CLERK: Jerome Hendricks.

2 THE COURT: I'm sorry, Mr. Murphy. I wanted
3 to get that matter out of the way.

4 You asked me if I was going to put
5 the officer on the stand, and my answer to that
6 was yes.

7 MR. MURPHY: Your Honor, may I make a
8 comment to the Court before you proceed?

9 THE COURT: Sure.

10 MR. MURPHY: Your Honor, I believe,
11 accurately summed up what has gone on before with
12 regard to this motion. I understand your Honor
13 is in a difficult position in one sense, because
14 there's a report that makes reference to an
15 anonymous source with no person's name. And at
16 this point, the Court has no indication what has
17 happened further between the parties.

18 Your Honor, this officer was
19 brought in to court yesterday. The defendant had
20 an opportunity, through his attorneys, to
21 interview the officer.

22 And in addition to that, the
23 officer was also brought into court today. And
24 the defense attorneys have again, had an

1 opportunity to, and in fact on yesterday's date
2 and today's date, interviewed the police officer.

3 I'm sure that the defense
4 attorneys will correct me if I'm wrong, but I was
5 present during both of the interviews, and the
6 officer told counsel that the anonymous source was
7 a reference to two women who gave him the
8 information which is in the report; that those
9 two women refused to give him their names.

10 MR. LUFRANO: He didn't say they refused to
11 give him their names. I never asked him about
12 that.

13 MR. MURPHY: That's something that I'm aware
14 of, that's my information. All of the
15 information he has is within the reports. The
16 officer would say he has never been contacted
17 before this week by defense or anybody else with
18 regard to eliciting information about that
19 report, which was in their possession.

20 Your Honor, there's been no
21 showing at all that the State's Attorney's Office
22 or that the police have withheld any information.
23 In fact, at the time the officer prepared this
24 report, it was not known to him that this was a

1 homicide. This report was prepared the day
2 before the body was discovered.

3 Your Honor, we cannot understand
4 why the officer should be put on the witness
5 stand. I don't believe there's any authority for
6 that. The defense attorneys have been given the
7 reports with all of the information he has. They
8 have been given an opportunity, I think, to
9 unusually interview him about that report. We
10 have made him available for that. How they
11 choose to handle that interview and what
12 information they choose to elicit is up to them.
13 But he's available, and he's spoken to them
14 willingly on two occasions. We don't understand
15 the necessity of having to put him on the witness
16 stand and have him asked questions under oath.
17 What purpose does that serve?

18 MS. PLACER: To show the Court that harm
19 was, in fact -- the representation nor the right
20 to interview doesn't make the record.

21 THE COURT: My understanding of Brady and
22 it's progeny is that a Brady violation occurs
23 whether the failure to disclose is advertent or
24 inadvertent. Good-faith disclosure does not

1 vitiate a Brady violation.

2 Brady is not predicated upon fault
3 either by the law enforcement policing agency or
4 the prosecutorial arm of the State or anybody
5 else. It has nothing to do with fault.

6 As a matter of fact, Brady
7 violations can occur under the most scrupulous
8 and diligent efforts to disclose. The question,
9 however, becomes whether or not, in fact, there
10 was anything to disclose. And in the posture in
11 which you have postulated, there's nothing to
12 disclose.

13 On the other hand, there appears
14 to be something to disclose.

15 My further understanding is that
16 the defense makes out its Brady violation if they
17 establish that it is probable that a violation
18 has occurred. They don't have to prove it beyond
19 a reasonable doubt or by a preponderance of the
20 evidence or anything of that nature.

21 Thus, I can find no way to resolve
22 what appears to be a conflict. Maybe it's not a
23 conflict, Mr. Murphy and Mr. Cassidy. Maybe it's
24 perfectly consistent, but I can't tell without a

1 hearing. And that's why it's necessary to put
2 the police officer on the stand.

3 Not that what you say is
4 incorrect, but the record doesn't show what you
5 have said. All the record shows is I have got a
6 motion to dismiss alleging certain facts, and no
7 facts have been elicited on which to either grant
8 or deny that motion with the defendant insisting
9 that his Fourteenth Amendment rights have been
10 violated. And it would be, in my judgment,
11 ludicrous to have this case come back for want of
12 a ten minute hearing to determine with
13 particularity what's going on with this
14 situation.

15 MR. MURPHY: Judge, it just seems ironic
16 that because of the defendant's failure to follow
17 through on whatever report they may have had in
18 their possession on previous dates and even
19 today's date and asking the appropriate questions
20 this officer has to be put on the stand and be
21 subject to questioning. I don't know even if the
22 Court is going to allow cross examination or how
23 this is going to be handled.

24 THE COURT: I don't find that a hardship on

1 the officer to be asked questions under oath.
2 He's going to tell the truth.

3 MR. MURPHY: I understand that, Judge.

4 THE COURT: What hardship is that to him?
5 And how does that in any way demean him or harass
6 him or anything else.

7 MR. MURPHY: Because it's like a deposition.
8 And why should the officer subject himself or any
9 witness. This is not a criminal proceedings at
10 this point. And the basis for conducting this
11 hearing is primarily because the defendant has
12 failed to follow through on a report that they
13 received, they never addressed. They could have
14 contacted the officer.

15 THE COURT: Probably not, Mr. Murphy. And
16 timeliness may be a question here. But I have
17 decided not to concern or address the question of
18 timeliness, because it is of such overriding
19 importance that timeliness seems to be an
20 inappropriate way to resolve this constitutional
21 issue that the defendant has raised.

22 But on the other hand, it does not
23 appear that even timeliness would have obviated
24 this hearing, because presumptively, at least,

1 you may say it's speculative, but it seems to me
2 that presumptively, had they gone to the officer
3 six months ago or a year ago, he would have told
4 them the same thing that he told them today and
5 yesterday, which would not have resolved this
6 issue. So, we would still be right in the same
7 place.

8 It is true that this issue need
9 not have emerged at this late stage, but it would
10 have emerged under any circumstances and in the
11 identical posture in which it now emerges, it
12 seems to me.

13 MR. CASSIDY: So, the record is clear, I
14 believe the issue is whether any harm has been
15 brought to the defendant, is that correct, Judge?

16 THE COURT: Well, -- whether there has been
17 a Brady violation and whether it is material.

18 MR. CASSIDY: I believe counsel said she had
19 this when we tendered our discovery material.

20 THE COURT: She had the document. And
21 there's no question that she had the document for
22 a number of months.

23 MR. CASSIDY: And there's an address on the
24 document. Defense has presented no evidence

1 whatsoever -- after arraignment when we tendered
2 our discovery material, that she sent anybody out
3 to this address or made any steps to go to this
4 address. The last minute, two years later, she
5 comes before the Court and says it's very
6 important to our case, right before the jury is
7 about to walk in, it's very important to our
8 case.

9 She had this address. They had
10 investigators. They could have gone out there to
11 the house.

12 I know you say there's a
13 probability that something might have went on
14 here. But there's nothing supporting their
15 motion by affidavit saying what the probabilities
16 are in this case, what harm has possibly been
17 brought to the defendant. There's nothing to
18 support by affidavit in their motion. And they
19 had a chance to talk to the officer about why
20 they think harm has been brought. So, all of
21 this is speculation on the Court's part. Even
22 after talking to the officer, nothing is
23 contained in the motion what they expect the
24 ofifcer can say; so, we can do this in every

1 situation, Judge. They could bring a motion in
2 front of your Honor and you can call witnesses
3 any time you want.

4 And I understand your reasoning.
5 And I like your reasoning, you know -- why try a
6 case again. To me that begging the question.
7 It's hard to respond to that question. We can do
8 this every time we have a trial. We can bring a
9 witness out, based upon their skimpy evidence
10 that they present to the court. That's all I
11 have to say, Judge.

12 THE COURT: Mr. Cassidy.

13 MR. CASSIDY: Yes.

14 THE COURT: It is true what you are saying
15 is that the defendant has not been as diligent as
16 he might have been in following up the sparsity
17 of the information he had. That does not obviate
18 a Brady violation. It does not obviate it,
19 because the onus of Brady is on the State, not on
20 the defense. And what I'm looking for is not to
21 see whether or not the defendant has made
22 meaningful use of information that was supplied
23 to him, but whether or not there was meaningful
24 information which was not supplied. That's all.

1 That's the extent of my inquiry.

2 MR. CASSIDY: Okay.

3 THE COURT: Once I haev satisfied myself
4 that there has been no failure to disclose
5 advertently or inadvertently, the inquiry comes
6 to a close.

7 MR. CASSIDY: Sure. But my second point is
8 this. Any motion should be supported by --
9 Strike that.

10 They had a chance to talk to the
11 officer. They could have cleared up what the
12 officer was going to say, and they could have
13 presented that in a written motion, what they
14 expect the officer to say, and then you could
15 have ruled upon it.

16 THE COURT: Well, unfortunately,
17 Mr. Cassidy, here's how I view that.

18 MR. CASSIDY: Sure.

19 THE OCURT: Circuit Court rule -- whatever
20 it is, requires that matters which do not appear
21 of record, that a motion be supported by -- under
22 affirmation or by -- under oath or by an
23 affidavit or something of that nature. That rule
24 can only be applicable to matters which are not

1 of fundamental constitutional magnitude, because
2 neither a statute or a court ruling can impede
3 the full excercising of the defendant's
4 constitutional rights.

5 Thus, the failure to put under
6 oath or to make an affidavit, unless in some very
7 narrow circumstances, don't operate to bar a
8 hearing.

9 For instances, Circuit Court Rules
10 would seem to require that a motion to suppress
11 statements or evidence or to quash an arrest be
12 under oath, and the failure to place it under
13 oath obviates the necessity for a hearing, and
14 some cases in Illinois have so held.

15 There are other cases, including
16 an Illinois Supreme Court case, which says that
17 the Circuit Court rule is not applicable, because
18 we deal with a defendant's constitutional right,
19 and court rules cannot abrogate his rights under
20 the constitution. That's what I have here,
21 because I have a clear -- if there was a Brady
22 violation, you would agree with me, I'm sure,
23 that that Brady violation constitutes a
24 demunition of the defendant's Fourteenth Amend

1 rigts. That's' what Brady is predicated upon.
2 That's how Brady emerged, that it's base.

3 And so, therefore, I'm not
4 terribly concerned about, again, the procedural
5 defaults, if there be any. . .

6 MR. CASSIDY: Okay.

7 THE COURT: What I want to do is get to the
8 substance of this problem, which we could have
9 done, perhaps, a half hour ago, after we
10 discussed the procedural things. But I
11 understand. The record is now clear what my
12 thinking is. And if you will call your witness,
13 we will proceed.

14 MR. MURPHY: He's present.

15 THE COURT: Miss Placek, if you're going to
16 call him, you should do so.

17 MS. PLACEK: The only thing I would like to
18 correct the record for is that I have been the
19 defendant's attorney for less than a year,
20 although, there would be imputed knowledge,
21 because my office represented.

22 I'd ask that he be made the
23 Court's witness, Judge.

24 THE COURT: On what basis?

1 MS. PLACEK: On the basis, Judge, as the
2 Court has pointed out, this is a constitutional
3 issue, and in fact, not in my basis an advisory
4 procedure. I would suggest, Judge, that the
5 Court has limited the parameters rightly so, of
6 the interrogation of the witness.

7 My suggestion, the reason for the
8 Court's witness is that it's my understanding
9 when such motions raise to the scope as we have
10 risen it to of a constitutional issue, the Court
11 should also be directly involved with the
12 inquiry.

13 THE COURT: State.

14 MR. MURPHY: Judge, we would object. The
15 defendant -- this is the defendant's request. If
16 the defendant wants to put them on, I think they
17 have the opportunity. The Court is allowing them
18 to do that.

19 THE COURT: I'm going to decline to call the
20 witness as a Court witness. If it appears that
21 this witness is hostile to either side, that
22 determination may change.

23 In any event, the latitude of this
24 hearing is pretty broad, and if I find that the

1 responses of the witness need to be probed
2 further, or in areas that neither the State nor
3 the defense have gone into, I have the option of
4 putting further questions to him in furtherance
5 of the truth, any way. So, there is no reason
6 for me to call him as a Court's witness at this
7 time.

8 If you wish to call him, please do
9 so.

10 MR. MURPHY: Judge, also, we would ask that
11 the police report, which is in question, remain
12 part of the court file so the court will have an
13 opportunity of viewing at the time of the
14 examination.

15 MS. PLACEK: I have no objection to it.

16 THE COURT: I have read it.

17 MR. MURPHY: For the record, I'm tendering a
18 copy. We have extra copies if the Court wants to
19 keep that copy.

20 THE COURT: We're going to make it part of
21 the court file.

22 MS. PLACEK: Quite frankly, it can go in as
23 a joint exhibit or either as the defendant's
24 exhibit on the motion.

1 THE COURT: Call your witness.

2 MS. PLACEK: Officer Kaddigan.

3 (Witness sworn.)

4 THE COURT: Officer, that microphone is on.

5 If you will pull it over in front of you and
6 speak directly into it, we will all hear you.

7 You may proceed.

8 MS. PLACEK: Thank you.

9 DAVID KADDIGAN,

10 called as a witness on behalf of the Defendant,
11 having been first duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY

15 MS. PLACEK:

16 Q Sir, state your name, please.

17 A David KADDIGAN, K-a-d-d-i-g-a-n.

18 Q How are you employed?

19 A Chicago Police Department.

20 Q Calling your attention to the date of
21 August 7, 1988, were you likewise employed?

22 A Yes, I was.

23 Q What exactly were your duties or
24 assignment?

1 A I was a youth officer assigned to the
2 youth division.

3 Q When you say you were a youth officer,
4 what were your duties as a youth officer?

5 A My duties as a youth officer involved
6 investigating child abuse complaint,
7 investigating missing persons and handling
8 juvenile arrest cases.

9 Q Specifically, when you say your duty
10 was investigating missing persons, am I correct
11 in assuming that those would, in fact, be minors,
12 correct?

13 A All missing persons.

14 Q So, in other words, that's not limited
15 to children or adults, correct?

16 A Correct.

17 Q Calling your attention to that same
18 time and date, did you eventually become involved
19 with the report of a missing person of a
20 Denise Johnson?

21 A Yes.

22 Q How long previous to the August 7th
23 date were you, in fact, involved in that
24 investigation?

1 A I think I had that case assigned to me
2 one day previously.

3 Q So, would it be correct to say that
4 that would be August 6th?

5 A No, it was a couple of days before
6 that, I believe. I'm not sure.

7 Q When you say a couple of days, would it
8 be between the range of August 5th to the 6th to
9 the eventual 7th, correct?

10 A I think she was reported on the 1st,
11 so, somewhere between the 1st and the 7th.

12 Q In your employment, did you try and
13 develop certain sources to find the whereabouts
14 of this young lady?

15 A I don't understand the question.

16 Q As part of your job, did you try and
17 develop certain sources to find the whereabouts
18 of this young lady?

19 A What do you mean by develop sources? I
20 went out and talked to people to see if they had
21 seen the girl.

22 Q Did you know these people before?

23 A No.

24 Q Were these complete strangers?

1 A Strangers on the street.

2 Q When you say strangers on the street,
3 did you do this in a hit-and-miss manner?

4 A Pretty much so, yes.

5 Q When you say you did it on a
6 hit-and-miss manner, would it be correct in
7 saying that you went primarily around the girl's
8 house?

9 MR. CASSIDY: Objection. I know your Honor
10 doesn't want us objecting during the whole stage
11 of the trial, but I believe the motion is
12 centered upon the police report. And she's
13 alleging certain Brady violations within what's
14 contained in the police report.

15 THE COURT: Your objection is sustained.

16 MS. PLACEK: Q Let me ask you this,
17 officer. Calling your attention to, in fact,
18 your investigation, how many sources did you, in
19 fact, investigate?

20 MR. CASSIDY: Objection, same basis.

21 THE COURT: I'm going to allow this one to
22 be answered.

23 THE WITNESS: A On my report dated the 7th
24 of August?

1 MS. PLACEK: Q I'm asking at any time?

2 A At any time?

3 Q Yes.

4 A I couldn't say.

5 Q When you say you just went in this
6 haphazard manner to find these sources, in what
7 area did you look?

8 A The area of --

9 MR. CASSIDY: Objection, Judge. You know
10 how we feel about it. I'm not going to make
11 objection after objection. The motion was
12 directed to August 7th, 1988, to a certain time,
13 location, contained in the police report.

14 THE COURT: I'm going to permit some
15 latitude. The objection is overruled.

16 MS. PLACEK: Q In what area did you look?

17 A In the area from which hse was reported
18 missing.

19 Q What area was that?

20 A 105th and State.

21 Q Did you know where the girl lived at
22 that time?

23 A I believe she lived in the suburbs.

24 Q When you say in the suburbs, do you

1 know how far away from that State address you
2 gave that she lived?

3 A Specifically in miles

4 Q Miles, yes.

5 A No, I don't know that.

6 Q Well, more than one, more than two,
7 more than three?

8 A Obviously more than one. A few miles.

9 Q Am I correct in assuming that when you
10 said you investigated at that State Street
11 address, that's because you had information
12 that's where she disappeared from, correct?

13 A Correct.

14 Q Thank you. Now, let me ask you this.
15 When, in fact, you were investigating on that
16 State address, you had information given to you,
17 correct, concerning the whereabouts of this young
18 lady?

19 A Excuse me.

20 Q You had information given to you
21 concerning the whereabouts of this young lady?

22 A Well, I had information from the other
23 police reports, is that what you mean?

24 Q I'm sorry. I did interrupt you.

1 A I don't understand the question
2 completely.

3 Q I will rephrase. You said you had
4 information from the other police reports,
5 correct?

6 A Yes.

7 Q And part of that information, and I
8 take it these were from missing persons reports,
9 is that she disappeared from the State address
10 you gave, correct?

11 A Relative lived there. She spent a lot
12 of time there. That's where she was reported
13 missing from, and that's why the Chicago Police
14 were investigating it.

15 Q In that area, correct?

16 A In that area, correct.

17 Q In relationship to this investigation,
18 did you receive any information about her
19 whereabouts from any people?

20 A On the 7th of August, I talked to two
21 people who said they had seen her around 103rd
22 and Michigan about five days earlier.

23 Q And, as a matter of fact, am I correct
24 in assuming that you saw those people face to

1 face, correct?

2 A That's correct.

3 Q And do you know whether they were men
4 or women?

5 A They were two women..

6 Q Were they living in a residence?

7 A In front of a residence at 10537 South
8 State. I asked them if they lived there, and
9 they said yes.

10 Q By the way, on August 7th, is that when
11 this happened, or when you wrote your report?

12 A That's I -- the report was made the day
13 of the investigation. That's a day-to-day
14 report.

15 Q And at that time, am I correct in
16 assuming that you didn't know whether this was a
17 homicide or missing person report, correct?

18 A To my knowledge, it was a missing
19 persons report.

20 Q Thank you, officer. And let me ask you
21 this. Did you ever inquire of those two women
22 whose address you knew, their names?

23 A I'm sure I did.

24 Q And did you ever record their names?

1 A No. If I did, it would have been in my
2 report.

3 Q And when you say it would have been in
4 your report, you eventually did find out this was
5 a homicide, correct?

6 A I heard about it two days later that
7 the victim had been found murdered.

8 Q Let me ask you this. Am I correct,
9 also, in assuming that you passed on your report
10 to your brothers in the Chicago Police Department?

11 A To my brothers, I don't have any
12 brothers.

13 Q To your fellow officers.

14 A The reports stay within the youth
15 division, so it was passed on to another youth
16 officer.

17 Q Did you ever return to the State Street
18 address to find out who these people were?

19 A No, I never did.

20 Q To the best of your knowledge, did any
21 Chicago Police Officer do that?

22 A I couldn't say.

23 Q Let me ask you this. Am I correct in
24 assuming that as you testify here today, what

1 you're basically testifying from is you're
2 testifying from your conversation with the
3 State's Attorney and from reviewing your reports?

4 A I'm testifying from the report I
5 reviewed.

6 Q When you say the report you reviewed,
7 before you reviewed that report, am I correct in
8 assuming that your memory was, in fact,
9 exhausted?

10 MR. MURPHY: Objection, Judge.

11 THE COURT: Sustained.

12 MS. PLACEK: Q In connection with that
13 report and with these two sources you spoke with,
14 approximately how long did you speak to them?

15 A A minute maybe.

16 Q Well, officer, in that minute, how many
17 addresses did they give you as to where this
18 young lady might be located?

19 A I believe they said three, 103rd and
20 Michigan, then on Wabash around 109th, and
21 Wabash, and you know --

22 Q Any other?

23 A I think on Michigan. I think they said
24 like 104th.

1 Q Could it be 109th and Indiana?

2 A It could be, yeah.

3 Q That could -- that's, in fact, where
4 you found out she had been missing from, the
5 general area?

6 A She was reported from 105th and State,
7 not 109th and Indiana. It's about six blocks
8 away.

9 Q Let me ask you this in one final
10 question, officer. Could you describe these
11 ladies to us?

12 A I remember that they were Black women.
13 That's all I can tell you.

14 Q Can you give us an age?

15 A No, I couldn't.

16 Q Can you give us a height?

17 A No, I couldn't.

18 Q Can you give us a weight?

19 A I'd have to say probably -- I'd have to
20 say they are probably medium build.

21 Q Is that a guesstimate?

22 A That's a guesstimate.

23 Q That's your memory, filling in from
24 what you don't remember or what you imagine you

1 remember, is that correct?

2 MR. MURPHY: Objection.

3 MS. PLACEK: Withdrawn.

If it pleases the Court, Judge,
based on the Court's restrictions previously
stated, that would be all of the questions of
this officer.

8 THE COURT: Thank you.

CROSS EXAMINATION

BY

MR. MURPHY:

12 Q Officer Kaddigen, you testified there
13 were two women you spoke to on that date,
14 correct?

15 A That's correct.

16 Q And these women didn't give you their
17 names, is that correct?

18 A That's correct.

19 Q And, therefore, you didn't put their
20 names in your report, is that correct?

21 A That's correct.

Q And officer, in your report, there's a reference to a Hardy Johnson, is that correct?

24 MS. PLACEK: Objection.

1 THE COURT: No. Overruled at this point.

2 MS. PLACEK: If it pleases the court, Judge,
3 I would point out that this is beyond the scope.
4 Never mind, Judge, I will withdraw that. I'm
5 sorry.

6 MR. MURPHY: Q Is that correct, officer?

7 THE WITNESS: A Right, there is a
8 reference to Hardy Johnson?

9 Q And he's a stepfather of the victim's
10 mother?

11 A That's correct.

12 Q And he lives at 105th and State in that
13 block, according to your understanding of this
14 case, is that correct?

15 A That's correct.

16 Q And officer, you testified that it was
17 your understanding that the victim was missing
18 from that area, is that right?

19 A That's correct.

20 Q Is it possible that you're confusing
21 the stepfather's address, 105th and State, with
22 the actual area where the victim was missing
23 from?

24 MS. PLACEK: Objection, leading and

1 suggestive and form.

2 THE COURT: Sustained.

3 MR. MURPHY: Q Is it possible that you're
4 not accurate as to the area where the victim was
5 missing?

6 MS. PLACEK: Objection.

7 THE COURT: Sustained. It's not relevant
8 where she was missing from.

9 MR. MURPHY: Fine, Judge.

10 Q Officer Kaddigan, based on the review
11 that you did in this case or the investigation
12 you did in this case and the information you
13 learned, is that information contained in the
14 report that you prepared on August 7th, 1988, to
15 you knowledge?

16 MS. PLACEK: Objection, learned when,
17 Judge?

18 THE COURT: No. Overruled.

19 THE WITNESS: A What was the question
20 again?

21 MR. MURPHY: Q Is the information you
22 learned with respect to the investigation of this
23 missing person, Denise Johnson, is all of that
24 information contained within your August 7th,

1 1988 report?

2 A Everything I learned that date I put in
3 that report dated August 7th, 1988.

4 MR. MURPHY: Nothing further, Judge.

5 REDIRECT EXAMINATION

6 BY

7 MS. PLACEK:

8 Q Your report is a summary and not a
9 verbatim account, correct?

10 A Yes.

11 MS. PLACEK: Thank you. That's all, Judge.

12 THE COURT: Officer Kaddigan, when you had
13 the conversation with these Black females, did
14 they or -- did either one of them tell you that
15 they had seen the missing person, the missing
16 girl at 103rd and Michigan at 1400 hours on
17 August 2, 1988?

18 THE WITNESS: Yes, they did, your Honor, if
19 that's what I put in my report, they did.

20 THE COURT: And it was they who personally
21 saw the girl?

22 THE WITNESS: Correct. This is done from a
23 picture. I showed them the picture, and they
24 said they had seen the girl around 103rd and

1 Michigan.

2 THE COURT: Would you or do you think that
3 you would be able to recognize either of the two
4 Black women if you saw them again?

5 THE WITNESS: No, your Honor, I wouldn't.

6 THE COURT: Were you alone at the time that
7 you had this conversation with them?

8 THE WITNESS: Yes, I was, your Honor.

9 THE COURT: Other than the two Black women,
10 was there anyone else present other than the
11 three of you?

12 THE WITNESS: No, your Honor, there wasn't.

13 THE COURT: Other than the report that you
14 have made, did you convey to any police officer
15 verbally, the conversation or the substance of
16 the conversation that you had with the two Black
17 females?

18 THE WITNESS: No, I didn't, your Honor.

19 THE COURT: Mr. Murphy, do you have any
20 questions based on what I have asked Officer
21 Kaddigan?

22 MR. MURPHY: Yes, Judge.

23 FURTHER CROSS EXAMINATION
24 BY

1 MR. MURPHY:

2 Q Officer Kaddigan, did, in fact, these
3 two people you spoke to -- you said you used a
4 picture of Denise Johnson to show them, is that
5 correct?

6 A That's correct.

7 Q In fact, to your knowledge, did they,
8 in fact, know Denise Johnson or did they
9 recognize the picture as looking like somebody
10 they saw or thought they saw?

11 A I'm assuming -- the person they saw was
12 based on the picture I had shown them. Whether
13 or not they knew Denise Johnson, I wouldn't
14 know.

15 Q When they said they had seen her on
16 August 2nd, did they actually tell you August
17 2nd? Did they say five days earlier? Or did
18 they say approximately five days? Do you recall?

19 MS. PLACEK: Objection.

20 THE COURT: Basis?

21 MS. PLACEK: Basis is incorrect as to the
22 statement of the evidence.

23 THE COURT: Overruled.

24 MR. MURPHY: Q In other words, officer,

1 what did they tell you about the date that they
2 had seen her or thought they had seen her?

3 A They probably said five days previous,
4 and what I --

5 MS. PLACEK: Objection, conclusion as to
6 what they probably said, Judge.

7 THE COURT: Overruled.

8 THE WITNESS: Q What I did was back date
9 it, count backwards from the present date and
10 used that in my report.

11 MR. MURPHY: Q So, officer, to your
12 knowledge, that may not be the exact day then, is
13 that correct?

14 MS. PLACEK: Objection.

15 THE COURT: Sustained.

16 MR. MURPHY: Nothing further.

17 FURTHER REDIRECT EXAMINATION

18 BY

19 MS. PLACEK:

20 Q Officer, are you in the habit of
21 putting inaccurate information in your report?

22 MR. CASSIDY: Objection.

23 THE COURT: Sustained.

24 MS. PLACEK: Q Did you put the date of

1 August 2nd in your report?

2 A Yes, I did.

3 Q To the best of your knowledge, that's
4 the correct date, is that correct?

5 A Yes.

6 Q as a matter of fact, you never tried to
7 alter or correct your report in any way, is that
8 correct?

9 A That's correct.

10 MS. PLACEK: As to the Court's questions,
11 Judge, May I inquire?

12 THE COURT: You may.

13 MS. PLACEK: Where did you receive the
14 picture from?

15 A From Estelle Fields, the person who
16 reported the girl missing.

17 Q To the best of your knowledge, that was
18 a true and accurate picture of how she looked at
19 that date?

20 A That's how she looked the date the
21 picture was taken. I never saw the victim
22 myself.

23 Q By the way, when you said you assumed
24 they recognized her from the picture, you never

1 made further inquiry of them as to how they knew
2 her, correct?

3 A That's correct.

4 MS. PLACEK: Thank you. Nothing further,
5 Judge.

6 THE COURT: Anything further?

7 MR. MURPHY: No, Judge.

8 THE COURT: Thank you, Officer Kaddigan.
9 You may step down.

10 THE WITNESS: The subpoena for Wednesday, do
11 I have to disregard that now?

12 MS. PLACEK: No, Judge, because of the
13 limitations of the motion that we anticipated the
14 Court would set in this matter, there's evidence
15 other than the matter in the motion that we would
16 call this officer for the defendant's case.

17 THE COURT: Is he subpoenaed in here for
18 Wednesday?

19 MS. PLACEK: Yes, Judge.

20 THE COURT: I suppose if you maintain
21 contact with the defense or the State, they will
22 tell you at what stage of the trial they are in.
23 You will be required to come back, but whether
24 it's going to be Wednesday --

1 MS. PLACEK: For the purpose of brevity and
2 not wasting this officer's time, the State wishes
3 me to direct them as to the evidence we would
4 call him on.

5 THE COURT: That's up to the State, and I'm
6 not going to anticipate that. As far as I'm
7 concerned, you're under subpoena. The subpoena
8 is continued. You will have to return.

9 Mr. Murphy can keep you informed as to whether it
10 will be Wednesday or not.

11 MS. PLACEK: For purposes of the record, we
12 would file a copy of the subpoena with the Court.
13 There's been an acknowledgement of receipt.

14 THE COURT: All right, you're excused.

15 (Witness excused.)

16 THE COURT: Before I hear your comments and
17 arguments on this motion, take about a two minute
18 recess.

19 (Whereupon a brief recess
20 was had, after which the
21 following proceedings were
22 had:)

23 THE COURT: Miss Placek.

24 MS. PLACEK: Yes, Judge.

1 THE COURT: I will hear any further
2 witnesses or argument.

3 MS. PLACEK: There would be no further
4 witnesses at this time. The only thing we would
5 point out to the Court, as the movant, is that
6 what essentially we have here is stated in our
7 motion. We have, at best, a crime of laxity
8 committed to the defendant. And at best a crime
9 of omission.

10 I would point out to the Court
11 that, in fact, the witness testified that because
12 of his actions, either by not passing on the
13 report to his brother officers or in the
14 alternative, Judge, by not taking a more careful
15 representational investigation two days later,
16 when he said he found out it was a homicide, the
17 identity of the two witnesses who stated that
18 they personally saw this girl at that address,
19 would be available to the defendant.

20 We would point out that, number
21 one, this wasn't done by name, but since the
22 family gave him a picture and reason and logic
23 would lead one to believe that they were, in
24 fact, interested in the returning of this love

1 one back to their bosom, that they would have
2 given him the best possible picture.

3 Therefore, Judge, we have a
4 recognition long after the State alleges that my
5 client was the last person to see her alive.

6 And I would point out that it
7 stands currently uncontradicted by the State that
8 we have a new issue coming up, and that is the
9 fact that the young lady did not truly or
10 accurately, as stated within, so far, the
11 evidence of this trial, disappear from the porch,
12 as was their contention in opening statements,
13 but rather, Judge, and I would simply point out
14 that this officer was present yesterday and was
15 spoken to as stated by the State, before openings
16 were made in this case, this officer testified,
17 Judge, that she didn't disappear, according to
18 Estelle Fields from the place she said, that was
19 originally put out in this trial, Judge, but from
20 an area some distance away from that which was
21 testified to.

22 It's our suggestion, Judge, that
23 irrespectively of what other sort of timing issue
24 the Court deals with, this defendant, because the

1 only one who saw those women, this officer, has,
2 in fact, stated under oath, that he cannot help
3 with the identity of same. He stated again in
4 the motion it was never passed on. And again, he
5 stated that these witnesses would not fall in the
6 realm of hearsay witnesses, Judge, but would
7 rather fall in the realm of eye witnesses.

8 Therefore, their testimony would
9 be accessible and possible to the Court.

10 We would suggest that the
11 defendant has irreparably harm. It was shown
12 during the first part of the questioning that
13 this gentleman is an agent of the State. The
14 suggestion that the investigation could have
15 continued if, in fact, his report was passed
16 on. He said, in fact, it never was. For this
17 reason, Judge, we would suggest a Brady
18 violation, in fact, exists.

19 THE COURT: State.

20 MR. MURPHY: Judge, I don't know, frankly,
21 what the defense is talking about. I still can't
22 understand and fail to see that Brady has been
23 violated in any way.

24 Now, at this point, not only do

1 they have the reports in their hands, but we also
2 have the testimony of the police officer who
3 testified that he didn't have the names of these
4 people that he talked to. All of the information
5 he had was in the report. And if he had their
6 names, they would have been in the report.

7 Counsel attempts to use this to
8 create a new issue or an issue in the case. And
9 your Honor, it's ridiculous. I'm sure if someone
10 walked around with a picture of the person, there
11 might be people who might say, "yeah, I saw this
12 person here or that person there." A good idea
13 of that is John F. Kennedy and Elvis Presley.

14 MS. PLACEK: With all due respect, the State
15 can't challenge the credibility of what a witness
16 could or could not state, Judge. As I understand
17 it, Judge, from, in fact, the Wilkins case, the
18 Court must accept these witnesses as possible
19 witnesses. I believe the Court's questions as to
20 whether or not they were, in fact, eyewitnesses
21 or hearsay witnesses cleared up any issue, and
22 credibility is not to be argued at this time, I
23 believe, Judge.

24 THE COURT: Overruled.

1 MR. MURPHY: No further argument, Judge.

2 THE COURT: Miss Placek.

3 MS. PLACEK: Your Honor, the only think we
4 would state is that we brought up omission. The
5 gentleman testified from the stand that he could
6 have gone out on, -- Strike that. He knew on
7 August 9th of that same year that this became a
8 homicide. He knew that, in fact, he had
9 evidence dealing with this homicide. He not only
10 knew, but I would suggest that this no longer was
11 stale dated evidence, and for this reason, Judge,
12 I would suggest, by his omission, he, in fact,
13 destroyed evidence that is potentially
14 exculpatory to the defendant. And I would
15 suggest that that evidence can never be retrieved
16 at this timne.

17 THE COURT: There are a lot of things which
18 are going through my mind right now, some of
19 which are probably grossly irrelevant to the
20 issues before me. It is easy in retrospect to
21 say what should have been done in an
22 investigation. And even easier to criticize
23 what was not done in an investigation.

24 As I look back upon it with 20/20

1 hindsight. And thus, I can tell that according
2 to the bill of particulars enunciated on two
3 separate occasions, once in December of 1988, and
4 again in February of 1989, in it's answer to
5 discovery, where they place the time of the event
6 in question to have been sometime between 9:30
7 p.m. On August 1st, 1988, through 3:00 a.m. On
8 August 2nd, 1988.

9 According to Officer Kaddigan's
10 report, the victim was seen some eleven hours
11 after the last time mentioned in the State's
12 answer to discovery. But the identity of the
13 person who saw her is unknown.

14 Miss Placek says that that is a
15 Brady violation for the police not to know. But
16 the problem is that I don't know of any authority
17 or any language in any authority that requires
18 the police to know. It's an interesting concept
19 and punishes the police investigation for the
20 incompetence, if that is what you would choose
21 to call it, or whatever reason that they failed
22 to know.

23 It may well be that something
24 should have alerted Mr. Kaddigan or the police

1 department once he filed his report, or the
2 detectives who investigated this occurrence, all
3 of those things may well be said that somebody
4 should have known. But the fact of the matter is
5 the evidence before the court indicates that no
6 one knows. And no one saught with particularity
7 to relate the significance of the observations
8 made by these two unknown Black females to this
9 case. And I suppose it might be fair to say that
10 Officer Kaddigan was in the best position, once
11 he determined or once he learned that a homicide
12 was involved in this occurrence, he may have been
13 in the best position to make that connection.
14 Although, there's nothing in this record yet that
15 would indicate that he knew when the homicide
16 took place or what time of the day, when in terms
17 of the date of the homicide or what time of the
18 day, so as to necessarily make the connection.

19 In any event, absent some
20 authority enunciating the proposition that a
21 Brady violation can take place out of
22 incompetance, I'm constrained to say that no
23 violation has taken place here. And I suppose --
24 I suppose a willful failure to know, a studied

1 rejection of that which is patently obvious, so
2 as to avoid coming into the knowledge, which
3 would exculpate could constitute a Brady
4 violation, but there doesn't seem to be anything
5 in this evidence that would suggest that that is
6 what has taken place here, the Defendant's motion
7 to dismiss is denied.

8 MS. PLACEK: Judge, for the purposes of the
9 record, we would thank the Court for hearing said
10 motion. We would ask, so that we don't have to
11 go over the same matter, when we do request that
12 this officer testify for the defendant, that we
13 incorporate today's activities into the trial.

14 THE COURT: Well, we will deal with that at
15 the time that this officer is called to testify,
16 if he is, in fact, called to testify. If he's
17 not called to testify when the defense wishes to
18 proffer that evidence by way of stipulation,
19 we'll take care of that matter.

20 MS. PLACEK: Fine, Judge.

21 THE COURT: For purposes of this record, I'm
22 marking this police report of Officer Kaddigan as
23 Defendant's Exhibit No. 1 on the Motion to
24 Dismiss and making it a part of the common law

1 record in this case.

2 Anything further in this matter?

3 MS. PLACEK: Eleven o'clock on Monday,
4 Judge?

5 THE COURT: By agreement -- or order of
6 Court?

7 MR. MURPHY: I thought it was going to be
8 1:00.

9 THE COURT: Well, I'm afraid that it's going
10 to have to be 1 o'clock, because I don't see any
11 realistic way of getting through the call by 11
12 o'clock. So, 1 o'clock On February 11th, for
13 further testimony.

14 Have a nice weekend.

15 Ladies and gentlemen, the court is
16 adjourned until 9:30 Monday morning.

17 (Whereupon, the above-
18 entitled cause was continued
19 to 1:00 p.m., February 11,
20 1991.)

21

22

23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CRIMINAL DIVISION

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS,)
8 Plaintiff,) Criminal
9 vs.) No. 88 CR 12517
10 JEROME HENDRICKS,)
11 Defendant.)

12 BENCH TRIAL

13 REPORT OF PROCEEDINGS had at the hearing
14 in the above-entitled cause before the HONORABLE
15 LEO E. HOLT, Judge of said court, on the 11th
16 day of February, 1991.

17 APPEARANCES:

18 HONORABLE JACK O'MALLEY,
19 State's Attorney of Cook County, By:

20 MR. SCOTT CASSIDY and
21 MR. JOHN MURPHY,
22 Assistant State's Attorneys,
23 for the People of the State of IL.

24 MR. RANDOLPH N. STONE,
25 Public Defender of Cook County, By:

26 MS. MARIJANE PLACEK and
27 MR. VINCENT LUFRANO,
28 Assistant Public Defenders,
29 for the Defendant.

30 L. B. STONE, CSR
31 Official Court Reporter

1 THE COURT: Both sides ready?

2 MR. CASSIDY: Yes.

3 THE COURT: Call your next witness, State.

4 MS. PLACEK: We will point out there was a
5 Motion to Exclude.

6 MR. CASSIDY: Judge, I will bring the witness
7 out because I don't know how to pronounce her name.

8 (Whereupon the following pro-
9 ceedings were had in the pres-
10 ence and hearing of the jury:)

11 THE CLERK: Raise your right hand.

12 (Witness sworn)

13 THE COURT: You may be seated, ma'am. That
14 microphone is on. If you will speak directly into
15 it, keep your voice up so we will all hear you.

16 MR. MURPHY: May I proceed, Judge?

17 THE COURT: You may.

18 CAROLYN STRONG,
19 a witness herein, called on behalf of the People of
20 the State of Illinois, after being first duly
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY

24 MR. MURPHY:

Q Could you state your name and spell your

1 last name, please?

2 A Carolyn Strong, S-t-r-o-n-g.

3 Q And, ma'am, by whom are you employed?

4 A Roseland Community Hospital.

5 Q And what capacity are you employed there?

6 A X-ray technologist.

7 Q How long have you been an X-ray
8 technologist?

9 A Seven and a half years.

10 Q And before you became an X-ray
11 technologist, were you employed at Roseland
12 Community Hospital?

13 A Yes, I was.

14 Q And how long were you employed -- How long
15 have you been employed by Roseland Hospital?

16 A Eighteen years.

17 Q What did you do before you were an X-ray
18 technologist?

19 A Clerk-typist.

20 Q Now, Carolyn Strong, can you describe what
21 your duties are as an X-ray technologist?

22 A My duties are to take X-rays.

23 Q And you work in the radiologist program
24 there?

A Yes.

1 Q What training or education have you had in
2 order to become an X-ray technologist?

3 A Two years training.

4 Q You went to a program that was
5 administered by Roseland Community Hospital?

6 A No, by another hospital.

7 Q What hospital was that?

8 A Henrotin Hospital.

9 Q And did you successfully complete that
10 training program?

11 A Yes, I did.

12 Q And at the completion of that program, did
13 you take any tests?

14 A Yes, I did.

15 Q And as a result -- Did you pass the test
16 you took?

17 A Yes.

18 Q And did you receive any certifications?

19 A Yes.

20 Q Could you tell the Court exactly what your
21 certification is in?

22 A Radiologist technologist.

23 Q Thank you. In addition to the training
24 that you received at Henrotin, had you received any
other training in the area of X-rays?

1 A Ultra grapher (Phonetic).

2 Q Are you in the process of receiving that
3 training in that area at this time?

4 A Yes, I am.

5 Q Carolyn, I'd like to direct your attention
6 to the date of August 19, 1986, do you recall if
7 you were working on that particular day?

8 A Yes, I was.

9 Q And where were you working?

10 A In the Radiologist Department.

11 Q That would be at Roseland Community
12 Hospital?

13 A Yes.

14 THE COURT: What date was that again.

15 MR. MURPHY: August 19, 1986, Judge.

16 THE COURT: '86?

17 MR. MURPHY: Yes, Judge.

18 THE COURT: Okay. You may proceed. I'm sorry.

19 MR. MURPHY: Thank you, Judge.

20 Q And what if anything happened on
that particular day?

21 A Well, I took X-rays on Denise Johnson.

22 MR. LUFRANO: Objection.

23 THE COURT: What's the basis?

24 MR. LUFRANO: She's saying that she took X-rays

1 of a named individual. There is no basis, no
2 foundation for how she knew that was the name of
3 the individual.

4 THE COURT: Objection sustained.

5 MR. MURPHY Q You took X-rays of a young girl,
6 is that correct?

7 MS. PLACEK: Objection, continuing in leading.

8 THE COURT: Overruled. It's preliminary.

9 MR. MURPHY Q And with regard to one
10 particular person, did you take specific X-rays?

11 A Yes.

12 MS. PLACEK: Objection. Foundational, also, as
13 to form.

14 THE COURT: Yes.

15 MR. MURPHY Q Is that correct?

16 A Yes.

17 Q What X-rays did you take?

18 A I took a wrist.

19 Q And could you describe to Judge Holt where
you took those X-rays at?

20 A It was in the Radiologist Department, X-
ray room.

21 Q And the person whose X-rays you took, when
she arrived, what did you do?

22 A Well, the receptionist.

1 MR. LUFRANO: Objection. He's assuming she
2 only took one X-ray all day long.

3 THE COURT: Overruled.

4 MR. MURPHY Q Can you describe the procedure
5 that you used when you met this individual whose
6 X-ray you took?

7 A Yes, the receptionist logged the
8 individual's name in the book, and I in turn --

9 MR. LUFRANO: Objection. She wasn't present.
10 This is totally hearsay.

11 THE COURT: The objection is sustained.

12 MR. MURPHY Q Carolyn, if I could, I will just
13 take you up to the point where you met this person.
14 Could you describe what happened when you met this
15 person? What did you do?

16 A Well, I took her in the room for X-rays.

17 Q What room did you take her into?

18 A In one of the X-ray rooms.

19 Q And can you tell Judge Holt what is in the
20 X-ray room, what equipment do you have there?

21 A Well, we have General Electric equipment,
22 we have X-ray table, X-ray tube, and we have the
23 machinery.

24 Q And that's the X-ray machine?

 A Yes.

1 Q Can you describe that machine to Judge
2 holt?

3 A It has a lot of numbers on it, on and off
4 button on it, X-ray button on it, X-ray exposure
5 switch for producing the X-ray.

6 Q Thank you. And when this person arrived
7 at -- By the way, was this person a male or female?

8 A Female.

9 Q And when she -- When you spoke to her,
10 what did you have her do when she went into the
11 room with you?

12 A Well, I had her -- I had my cassettes
13 there. I was going to use tape X-rays, place her
14 hands on the cassettes, and I positioned it for the
15 first X-ray.

16 Q And when you placed her hand in position,
17 did you put it on the table?

18 A Yes.

19 Q And what did you do after you placed her
20 hand on the table?

21 A Well, I went behind the X-ray panel and
22 took the X-ray.

22 Q Now, the equipment that you used, the X-
23 ray machine that you used, you used the word
24 cassette, what is a cassette?

1 A That would be the film that the X-ray is
2 being done on.

3 Q And did they cassette have an
4 identification assembly attached to it?

5 A Yes, it was what's known as a blocker.

6 Q What's a blocker?

7 A It's a part of the film that we use to
8 stamp for the name and stuff to come out.

9 Q And in this particular case, this is the
10 way this particular cassette was set up, then, is
11 that correct?

12 A Yes.

13 Q And in this particular case, did you also
14 have an identification -- or some way of
15 identifying the X-ray?

16 A Yes, once we take the film, we have what's
17 known -- what we call a flashcard with the
18 patient's name, date, that she was there, and a log
19 number where we put it in the log book.

20 Q In addition to that information, is there
21 any other information on that card?

22 A Usually when the examine was done.

23 Q And is the hospital name also on there?

24 A Yes, it is.

Q Now, Carolyn, did you use an

1 identification card on a flashcard in this
2 particular case?

3 A Yes, I did.

4 Q And how was that flashcard reflected on
5 the X-ray?

6 A Well, once you took the film into the dark
7 room, the blocker, I was telling you about on the
8 side?

9 Q Yes.

10 A Shows you where to stamp the film into
11 this flasher, and it comes out on the film. Once
12 it's developed after you stamp it.

13 Q And did you do that in this particular
14 case?

15 A Yes.

16 Q Now, Carolyn, approximately -- Did you
17 take more than one X-ray in this case?

18 A Two X-rays, but three views.

19 Q And after you took those X-rays, what did
20 you do?

21 A Well, once I made sure I had the right
22 amount of film, I took them to the radiologist to
23 be read.

24 Q To be what?

A To be read.

1 Q Before you took them to be read, after you
2 actually took the photographs, the shots, did you
3 develop those?

4 A Yes, I did.

5 Q Could you describe to Judge Holt what you
6 did?

7 A You go into the dark room, you have to do
8 this in the dark, you took the flashcard with you
9 because that's how you're going to stamp the film
10 of who you are doing. You take the film out of the
11 cassette, and you stamp with the card, and you put
12 it through the process.

13 Q And did you develop, then, these X-rays?

14 A Yes.

15 Q And are they marked accordingly with the
16 identification which you described?

17 A Yes, once they come out of the processor,
18 you have to check it to make sure the name, what
19 you do, and the slides mark correctly on the film.

20 Q Have you had any training in developing
21 that?

22 A Yes, that's part of the school training.

23 Q And you satisfactorily completed that
24 training as well?

25 A Yes.

1 Q That's the two-year training program you
2 described?

3 A Yes.

4 Q Carolyn, this X-ray machine that you used,
5 was that machine in proper working order?

6 A Yes, it was.

7 Q How did you know that?

8 A Well, number one, we have a warm-up
9 procedure that we follow in the morning, and also
10 if it's not working, you won't get no film.

11 Q Is it customarily inspected as well?

12 A Yes, it is.

13 MR. MURPHY: Could I have a moment, Judge?

14 THE COURT: Sure.

15 (Whereupon there was a short
16 pause in the proceedings)

17 MR. MURPHY: May I approach, Judge?

18 THE COURT: You may.

19 MS. PLACEK: I ask for a sidebar, Judge.

20 THE COURT: Miss Strong, would you step down
21 from the witness stand? Step into the adjoining
22 conference room for a moment, please.

23 Miss Placek?

24 MS. PLACEK: Very briefly, Judge, and very
quickly, I anticipate that the State was about to

1 show what they came over to counsel's table and
2 showed us which purports to be different X-ray
3 shots. With all due respect, Judge, and with my
4 limited knowledge of x-ray and perhaps now proven
5 from the State, one of them strikes me definitely
6 not as an X-ray of a hand, which I suggest the
7 foundation has been only laid as to that, and the
8 other, Judge, is, of course, questionable, that's
9 why I asked the Court for proof as to whether or
10 not the State was going to attempt to have this
11 young lady from Roseland Community Hospital
12 identify all four shots as shown within that.

13 THE COURT: Mr. Murphy?

14 MR. MURPHY: Judge, actually, there's three
15 different exhibits. One of the exhibits that's two
16 X-rays on it, so there's actually two shots on that
17 one exhibit. Those both corresponds to the date in
18 which this witness was working, and she will
19 identify them as X-rays that she took. The other
20 exhibit is an X-ray that was also taken at Roseland
21 Community hospital. However, this witness will not
22 testify that she took that X-ray. She will
23 identify it, though, as an X-ray that was taken at
24 Roseland community Hospital.

24 MR. LUFRANO: Objection, your Honor. It's not

1 a document where other material that's under her
2 care, custody, or control. She's not the record
3 keeper nor is she the person who holds X-rays in
4 some filing capacity.

5 MR. MURPHY: Judge, I don't think she has to be
6 the record keeper. I think it can be -- In fact,
7 cases are clear that it doesn't have to be a record
8 custodian. It could be another qualified witness,
9 and at this point, we have established that she was
10 a qualified witness.

11 MS. PLACEK: With all due respect, Judge, she's
12 just qualified with the three pictures she's taken,
13 which are the ones State spoke of, the one and the
14 two separate views, Judge.

15 THE COURT: What do you contend is the basis
16 for admissibility of these documents, Mr. Murphy?

17 MR. MURPHY: Well, Judge, as to the -- You're
18 talking about the last document now, Judge?

19 THE COURT: I'm talking about all of them. If
20 some of those documents, I take it, you're saying
21 are within this witness' knowledge as having been
22 made or taken, made at the time at Roseland
23 Hospital on the 19th of August, 1986, that's one
24 basis for admissibility.

25 MR. MURPHY: Right.

1 THE COURT: The other is what?

2 MR. MURPHY: Well, Judge, as to the other X-
3 ray, our basis is business record, not the one
4 obviously she's dealt with, but the other one she
5 does not have direct involvement in.

6 THE COURT: It isn't your contention you have
7 laid a foundation to make this X-ray a business
8 record?

9 MR. MURPHY: Well, Judge, that's how we are
10 seeking to introduce the last X-ray.

11 THE COURT: You're saying the foundation you
12 have laid is sufficient to establish this document
13 as a business record?

14 MR. MURPHY: No, at this point, Judge, I intend
15 to do it when I approach her, not at this point.

16 MS. PLACEK: That would be letting the horse
17 out of the barn, and then locking the barn door.

18 THE COURT: How would one go about doing it
19 otherwise than to show -- to establish if he can
20 that the document is, in fact, a business record,
21 and then seek its admission into evidence? He has
22 to show it to the witness it seems to me.

23 MS PLACEK: He would also have to show that
24 there is a purview of knowledge other than taking
the remote matter she testified to.

1 THE COURT: Well, what you're simply saying he
2 may not be able to make the foundational base for
3 admissibility?

4 MS. PLACEK: The Court is correct, Judge.
5 That's what I am saying, not with this witness, not
6 with the questions he's asked her so far.

7 THE COURT: That's why he's going to ask her
8 some more questions.

9 MS. PLACEK: With all due respect, Judge, I
10 have a feeling, and accuse me of being a little
11 skeptical of my feelings, I have a feeling, Judge,
12 that what the State is about to say is about to
13 have her identify the identification point of the
14 X-ray and say, "Do you recognize that?" Referring
15 to the third X-ray not taken by her, and she will
16 say, "Oh, yes, that's the blank tape that we put on
17 all our X-rays," and have it justified like that.
18 My position, Judge, quite frankly, is that that's
19 not quite enough as established by law not only
20 quite enough to establish by law, Judge, but I
21 would suggest that even a little more has to be
22 done, and the reason I am speaking somewhat
23 haltingly, Judge, is that I am not going to teach
24 them how to try their case --

MR. MURPHY: We appreciate that.

1 MS. PLACEK: Please address your comment to the
2 Court, counsel.

3 THE COURT: What are you saying?

4 MS. PLACEK: Judge, it's distracting when
5 counsel is referring that I come from a kennel.

6 Judge, in this particular matter, what
7 I am suggesting to the court it's not my duty to
8 teach them how to try a case, and I am saying it's
9 my duty, in fact, to instruct the Court when I feel
10 an objection lies.

11 THE COURT: Mr. Sheriff, will you ask the
12 witness to return?

13 You may be seated.

14 All right. At this point, the
15 objection of the defendant is overruled. You may
16 proceed.

17 MR. MURPHY: Thank you, Judge.

18 May I approach, Judge?

19 THE COURT: You may.

20 MR. MURPHY Q Carolyn, I am going to show you
21 what we have marked as People's Exhibit No. 13.
22 I'm going to ask you to look at this and tell me if
23 you recognize what it is?

24 A Okay, this is what we all the lateral view
of the wrist.

1 MS. PLACEK: Objection. I believe the witness
2 is not qualified to read the X-ray.

3 MR. MURPHY: Judge, I will qualify her if it
4 would help in this area.

5 Q Carolyn, have you had any
6 experience and/or training in looking at X-rays and
7 determining generally what they portray?

8 A Yes.

9 Q How much training or experience have you
10 had? Could you tell Judge Holt?

11 A Well, it goes along with the training.
12 You have to know what you're taking, what views are
13 required.

14 Q And approximately how many X-rays have you
15 taken in your career?

16 A A lot of them, quite a few, over -- It's
17 too many to put a number on it.

18 Q Would you say more than 500?

19 A Yes.

20 Q More than a thousand?

21 A Yes.

22 Q Carolyn, when you take those X-rays, do
23 you have to look at those X-rays initially before
24 you give them to the doctor who requested them?

A Yes.

1 Q To show what the doctor wants --

2 MR. LUFRANO: Objection. She wouldn't know
3 what the doctor is looking for.

4 THE COURT: Overruled, Mr. Lufrano. She cannot
5 read an X-ray, but she can look at an X-ray to see
6 if it's the lateral view of the hand or posterior
7 view of the hand.

8 MR. LUFRANO: Your Honor, she's indicating if
9 she place it in a lateral position, she gets a
10 lateral view. It's a view of the arm that she's
11 able to distinguish whether or not it was moved or
12 not moved after the X-ray was taken.

13 THE COURT: Overruled.

14 MR. MURPHY Q Carolyn, you can answer that
15 question. Do you remember the question I asked?

16 A No.

17 MR. MURPHY: Judge, I forgot my question, too,
18 I'm sorry.

19 (Whereupon question read back)

20 THE WITNESS: Yes, I do.

21 MR. MURPHY Q At this time I ask you to look
22 at People's Exhibit No. 13 and tell me what that
23 is.

24 A This is the lateral view of the wrist. It
has the --

1 MR. LUFRANO: Objection to what it has.

2 THE COURT: Overruled.

3 THE WITNESS: Okay, it has a left what we call
4 an X-ray left marker indicated on the left wrist
5 that was done, it has my initials on it, C.S.

6 MR. MURPHY Q And where are your initials at?

7 A It's right next to the "there."

8 Q And you customarily place your initials on
9 X-rays that you take at Roseland Hospital as part
10 of your regular practice or procedures?

11 A Yes.

12 Q And are those initials that are on that X-
13 ray the same initials or in the same form that you
14 place your initial -- which you placed your
15 initials on X-rays?

16 A Yes.

17 Q And you testified that you used what's
18 called a -- an information plate, is that what you
19 call it? What do you call it?

20 A Flashcard.

21 Q And is there a flashcard on this
22 particular X-ray?

23 A Yes, it is.

24 Q And does that flashcard reflect the
 information with respect to this patient which you

1 recorded at the time you prepared that X-ray?

2 A Yes, it does.

3 Q Thank you, and that's an X-ray that you
4 took, is that correct?

5 A Yes.

6 Q I'm also going to show you what's been
7 marked as People's Exhibit No. 14 for
8 identification purposes. Do you recognize that?

9 A Yes.

10 Q What is shown in People's Exhibit No. 14?

11 A It would be an A P view and -- bleak view.

12 Q And there's two different shots on that X-
13 ray, is that correct?

14 A That's correct.

15 Q And, again, is your -- is there any reason
16 that you recognize what's portrayed in that
17 particular exhibit, People's Exhibit No. 14? Let
18 me rephrase that question. How do you recognize
19 that X-ray?

20 A How did I recognize it?

21 Q Yes.

22 A As what it is?

23 Q Yes. Let me rephrase it. How do you
24 recognize that as an X-ray that you took?

A Because of my marker and initial.

1 so to do, but I'm sitting here in order to help put
2 this in a frame where I can deal with it and
3 understand it, anticipating where you're going, and
4 I anticipate that you're trying to show the
5 identification of Denise Johnson through the
6 earlier X-rays taken of her in 1986, that they were
7 comparing with X-rays from the body and concluded
8 that they are one in the same. The question of
9 whether or not the X-rays or any medical records
10 constitute a business record is what has been
11 running through my head since Miss Placek raised
12 the objection, and I have to have recourse to
13 develop books or your help, one or the other
14 because I didn't do a lot of PI work, okay, so,
15 therefore, a lot about the medical records and that
16 kind of thing, but my recollection of the medical
17 record is an exception to the business record.
18 It's one of the exception -- It is not a business
19 record, thus it requires different kinds of proof
20 than does a business record in a classic sense, if
21 I understand the classic sense. That's what I'm
22 thinking up there on the bench, figuring out where
23 you people are going, but if I am wrong on that, my
24 head can go back to listening to something better
than what's rattling around in my head making

1 noises.

2 MR. MURPHY: Judge, first of all as to the
3 first two exhibits which the witness identified, we
4 are not offering those as business records. We
5 don't have to because she's already identified them
6 as X-rays that she took.

7 THE COURT: Yes, but we don't know who she took
8 them of, and you're going to ask me to conclude
9 that those are X-rays of Denise Williams -- Denise
10 Johnson, and there's no way that witness can know
11 that.

12 MS. PLACEK: Or this particular Denise Johnson.

13 MR. CASSIDY: Just a piece of circumstantial
14 evidence, Judge, that we are offering, that's all.

15 MR. PLACEK: Judge, circumstantial evidence
16 even still has to be based on foundation.

17 MR. MURPHY: Judge, I don't have a case I can
18 hand you, and I don't know if defense counsel has
19 any or not, but Court can allow X-rays as business
20 records, and I'm primarily concerned with --

21 THE COURT: Do you have the case?

22 MR. MURPHY: No, just from reading -- Do you
23 want this on the record, Judge.

24 THE COURT: Not necessarily, but it can be.

MR. MURPHY: I don't really care if it's on the

1 record or not at this point, Judge.

2 THE COURT: She wants it on the record.

3 MS. PLACEK: We might as well stay on the
4 record.

5 MR. MURPHY: Judge, I can't give it to you at
6 this point, but what I've read primarily are trial
7 techniques manuals in preparation of this witness.
8 Now, from what I read the Court's take notice that
9 business records can be used. I don't know if
10 that's reference to Illinois Courts or not. I have
11 to do some research in the area.

12 THE COURT: You got a copy of 38?

13 MS. PLACEK: That's the one I have before me.

14 THE COURT: That one is old.

15 MS. PLACEK: I took it to read because that's
16 one of the reasons you were overruling my
17 objection, Judge. I got one in my bag. Which
18 section.

19 THE COURT: 115 dash 5.

20 MS. PLACEK: It talks about coroner's record.
I suggest that's probably the same thing.

21 THE COURT: Okay, they make coroners
22 admissible.

23 MS. PLACEK: That's the exception. I'm
24 referring to 15-5 not five point one, no writing or